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S.D. OF N.Y.W.P.

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 TIMOTHY M. BETLEWICZ

4 Plaintiff,

5  
6 -against-

7  
8  
9 THE DIVISION OF NEW YORK  
10 STATE POLICE, FORMER ACTING  
11 SUPERINTENDENT JOHN P.  
12 MELVILLE, in his Official and  
13 Personal Capacities, and  
14 SUPERINTENDENT JOSEPH  
15 D'AMICO in his Official and  
16 Personal Capacities

17 Defendants.

COMPLAINT WITH  
JURY DEMAND

CIV NO.: \_\_\_\_\_

12 CV 0179  
JUDGE SEIBEL

18 Plaintiff, by his attorney, Martin W. Schwartz, complaining of the  
19 Defendants, respectfully alleges as follows:

20 NATURE OF THE ACTION

21  
22 1) This is a civil action for declaratory relief, injunctive relief, back pay,  
23 front pay, accrued benefits and damages, wherein the Plaintiff seeks full payment  
24 of all monies, perks, benefits and emoluments to which he is entitled under the  
25 Constitution and Laws of the United States and the State of New York, because of  
26 his employment as a New York State Police trooper with the Defendant Division of

1 State Police, and because of his line of duty disability and because of his  
2 retirement from that position on August 9, 2011, on an Accidental (line-of-duty)  
3 Disability Retirement Pension granted him by the New York State Police and Fire  
4 Retirement System, and because of his said permanent disability incurred at work  
5 and established by the N.Y.S. Workers Compensation Board and the N.Y.S. Police  
6 and Fire Retirement System. These payments, benefits and emoluments were  
7 intentionally and wrongfully not made to Plaintiff, in derogation of his aforesaid  
8 federal constitutional and statutory rights. Additionally, Plaintiff seeks damages  
9 and injunctive relief against the Defendants Melville and D'Amico in their  
10 personal and official capacities for, acting under color of law, intentionally,  
11 maliciously and wrongfully withholding the aforesaid disability compensation, *etc.*,  
12 from the Plaintiff, *and for* engaging in an unlawful and ongoing vendetta against  
13 the Plaintiff, improperly using the resources of the New York State Police to  
14 maintain a meritless and illegal criminal and internal investigation of the  
15 Plaintiff, and also including but not limited to misusing the resources of the  
16 Cayuga County, New York, District Attorney and the County Court of the County  
17 of Cayuga by their alleging, on information and belief, that Plaintiff made a false  
18 claim of permanent injury incurred in the line of duty. This investigation has  
19 continued after the Plaintiff's injuries were established by the New York State  
20 Workers' Compensation Board after trial, and affirmed on appeal, as occurring in  
21 the line of duty and being permanent, and after same were also established as  
22 occurring in the line of duty by the Accident Board of the New York State Police  
23 and Fire Retirement System, and permanently disabling by the Medical Board  
24 and independent medical examiner of the said Retirement System, resulting in  
25 Plaintiff being granted the aforesaid line of duty Accidental Disability Retirement  
26

1 Pension equal to three-quarters of his final average salary by the New York State  
2 Comptroller who superintends the Police and Fire Retirement System.

### 3 4 JURISDICTION

5  
6 2) Plaintiff maintains this action for violations of his rights, privileges and  
7 immunities under the Equal Protection (against gender discrimination) and Due  
8 Process Clauses of the Fifth and Fourteenth Amendments to the United States  
9 Constitution, Title 42 United States Code §1983, for discrimination against him in  
10 compensation under Title 29 United States Code §§206(d), 215 and 216 (Equal Pay  
11 Act), and such other provisions of the Constitution and laws of the United States  
12 as may be hereto applicable, including but not limited to Title 42 United States  
13 Code §1988 with respect to attorneys fees in civil rights actions.

14 3) The original jurisdiction of this Honorable Court is invoked pursuant to  
15 Title 28 United States Code, §§1331, 1343(a)(3) and 1343(a)(4).

### 16 17 VENUE

18  
19 4) All Individual Defendants are residents of the State of New York.

20 5) The Division of New York State Police is a state-wide law enforcement  
21 agency with offices in the Southern District of New York, including the City of  
22 White Plains.

23 6) All of the Plaintiff's federal claims herein, arose within the State of New  
24 York. At the time of the accrual of the claims, Plaintiff was assigned to Troop T,  
25 which has patrol and investigative operations and jurisdiction in the Southern  
26 District of New York, but outside of the five counties comprising New York City,

1           7) Accordingly, venue is proper in the Southern District of New York  
2 pursuant to Title 28 United States Code, §§1391(b) and 1391(c), and this case  
3 should be assigned to the White Plains, New York Courthouse.

4  
5                                   PARTIES  
6

7           8) Plaintiff was, for twelve and one half years until May 6, 2010, employed  
8 as a full-time sworn trooper with the Defendant New York State Police. On  
9 January 10, 2011, he was critically injured in the line of duty while on uniformed  
10 patrol on the New York State Thruway in Brutus, New York (Milepost 301.2), and  
11 airlifted to a hospital where he subsequently had major surgery for a life-  
12 threatening injury to his cervical spine.

13           9) On May 6, 2010, while out on disability and unpaid, Plaintiff was  
14 terminated from the State Police by action of the Defendant Melville, for alleged  
15 violations of the Rules and Regulations of the State Police, primarily as the result  
16 of an alleged scientific test that showed the presence of *Cannabis sativa* in a hair  
17 sample.

18           10) On August 9, 2011, the Plaintiff was granted an Accidental Disability  
19 Retirement from the Defendant State Police by the New York State Comptroller,  
20 on account of his line of duty injury on January 10, 2011.

21           11) On August 26, 2011, the Defendant State Police changed the Plaintiff's  
22 status from "Dismissed" to "Disability Retirement" (Complaint Exhibit #1).

23           12) Plaintiff was a resident of the State of New York from at least the date  
24 of his line of duty injury on January 10, 2010, until on or about November 1, 2010  
25 when he moved to and became a legal resident of the State of Florida.  
26

13) From January 10, 2010, until on or about January 1, 2011, the Defendant Melville was the Acting Superintendent of the Defendant New York State Police.

14) From on or about January 1, 2011 to date, the Defendant D'Amico was and is the Superintendent of the Defendant New York State Police by gubernatorial appointment and confirmation by the New York State Senate.

## BACKGROUND

15) Plaintiff was injured on January 10, 2010, at approximately 6:30 P.M., on the New York State Thruway near Milepost 301.2 (Brutus, N.Y.) while on duty, in uniform and performing patrol in a marked New York State Police car. He was struck by an unknown object, presumably a loose (trailer) spare tire from a passing vehicle, as one of these was recovered near the accident scene.

16) Plaintiff was knocked unconscious to the ground from the impact, and was found by a passing motorist, who called for assistance. Plaintiff was subsequently airlifted to the Upstate University Medical Center where he was admitted to the Intensive Care Unit.

17) Plaintiff was subsequently released from the hospital, and returned there on February 9, 2010, for major cervical decompression surgery to prevent further damage including paralysis, which surgery included implantation of hardware to stabilize the spinal column.

18) Plaintiff was paid his full salary through January 13, 2010. On January 14, 2010, based upon the aforesaid hair sample positive test for *Cannabis*, he was suspended from the State Police without any pay. These test results were **not received** by the State Police until January 14, 2010. Plaintiff denied the use of

1 *Cannabis* and indicated that it might have been in his system as the result of his  
2 having been exposed to the substance in the course of his duties, but such  
3 explanation was summarily rejected by the Defendant State Police and the  
4 Defendant Melville, then Acting Superintendent.

5 19) On May 6, 2010, still unpaid, the Plaintiff was terminated from the  
6 State Police.

7 20) Sometime after January 14, 2010, the Internal Affairs Bureau of the  
8 State Police commenced an exhaustive investigation in an endeavor to prove that  
9 the Plaintiff had fabricated his accident. His treating doctors were interviewed  
10 repeatedly and medical records obtained without the written permission of the  
11 Plaintiff, as required by both state law and HIPPA mandates, rules and  
12 regulations. Subsequently his treating surgeon, Dr. William Lavelle, complained  
13 of being harassed for information by Defendant State Police Internal Affairs  
14 investigators. Dr. Lavelle informed them repeatedly that this accident almost  
15 killed the Plaintiff and that it was not fabricated.

16 21) On April 8, 2010, after a lengthy trial, Administrative Law Judge  
17 Martin E. Donnelly-Heg of the New York State Worker's Compensation Board,  
18 rendered a final decision determining that the Plaintiff had been injured in a  
19 genuine line of duty accident and made awards. During that trial the primary  
20 case investigator for the Defendant State Police testified under oath that their  
21 investigation had not been able to establish that the Plaintiff had fabricated his  
22 injury.

23 22) Notwithstanding this, the Defendant State Police pressured the State  
24 Insurance Fund (it's workers' compensation insurance carrier) to appeal Judge  
25 Donnelly-Heg's decision. In that appeal it was again argued that the accident was  
26 fabricated by the Plaintiff who feared a positive drug test. The Appeals Panel

1 rejected this argument indicating that the test results were not known until days  
2 after the Plaintiff was injured. On October 4, 2010, this Three-Judge Panel  
3 unanimously affirmed Judge Donnelly-Heg's decision, and the carrier declined to  
4 appeal the case to the Appellate Division of the New York State Supreme Court.

5 23) Notwithstanding these decisions and in violation of their own  
6 regulations, the Defendant State Police continued to refuse to pay wages to the  
7 Plaintiff. In the Administrative Manual of the Defendant State Police, Regulation  
8 5.12 grants full-pay leave to sworn members thereof upon their being injured in  
9 the line of duty and unable to work.

10 24) Upon information and belief such disability pay is routinely granted to  
11 all sworn members of the state police. Plaintiff has been informed that at least  
12 one female trooper performing the same patrol and related duties as the Plaintiff  
13 and now disability-retired, named Jeanette M. Dockstader-Spare, formerly  
14 assigned to the Auburn Station of the Defendant State Police, was injured in the  
15 line of duty, granted the full pay provided for by Regulation 5.12, aforesaid, and  
16 subsequently retired on a State Police Disability Pension. Plaintiff has also been  
17 informed that other similarly situated female troopers performing duties akin to  
18 his, and injured in the line of duty, were also granted Regulation 5.12 disability  
19 pay, and that, on information and belief, no female troopers injured in the line of  
20 duty were refused such disability pay. Plaintiff alleges this patent discrimination  
21 violates the federal Equal Pay Act, and violates his right to equal protection  
22 against gender discrimination in pay, under the Fifth and Fourteenth  
23 Amendments of the U.S. Constitution.

24 25) On September 20, 2010, the Plaintiff appeared *pro se* at a  
25 Discrimination Hearing before the New York State Workers' Compensation Board.  
26 He asked for an adjournment to obtain counsel. The Defendant State Police sent

1 one of their assistant division counsels, Kevin Bruen, Esq., to appear on their  
2 behalf. In opposition to the Plaintiff's request for an adjournment, Mr. Bruen  
3 alleged that there was an ongoing criminal investigation of the Plaintiff. Judge  
4 Donnelly-Heg rejected the comment as irrelevant. A copy of the official minutes of  
5 this hearing is attached as Complaint Exhibit #2.

6 26) On August 9, 2011, after an exhaustive process, the New York State  
7 Comptroller, acting in his capacity as head of the State Retirement System,  
8 granted the Plaintiff an Accidental Disability Retirement Pension, finding that the  
9 aforesaid injury to him on January 10, 2010, occurred in the line of duty and  
10 permanently incapacitated him from performing the duties of a state trooper.

11 27) Notwithstanding these various determinations of genuine injury, where  
12 in each of them the Defendant State Police was given numerous opportunities to  
13 prove its claim of a fabricated accident, but failed to do so, they have continued to  
14 pursue unconstitutional and unlawful investigations of the Plaintiff. Both the  
15 Defendant Melville and the Defendant D'Amico have been asked in writing by  
16 Plaintiff's Counsel herein to cease and desist from this harassment of the Plaintiff  
17 and misuse of the powers of the Defendant State Police. Upon information and  
18 belief, including Plaintiff's obtaining copies of Cayuga County Court subpoenas,  
19 one of which we aver was illegally issued, served upon the Federal Records Center  
20 to obtain military medical records of the Plaintiff, this investigation has continued  
21 to the present day without legal purpose, with the knowledge and assent of these  
22 two individual defendants.

23 28) Said ongoing investigation we aver is an abuse of the powers of the  
24 Defendant State Police, violative of the Constitution and laws of the United States  
25 and inconsistent with the norms of an American Society that is governed by a  
26



1 Constitution and laws, inter alia, constraining the police powers of the state, and  
2 punishing abuses thereof.

3  
4 **FIRST CAUSE OF ACTION**

5 **EQUAL PAY ACT**  
6

7 29) Plaintiff repeats and realleges paragraphs 1 through 28, *supra*, as if  
8 more fully set forth herein.

9 30) Plaintiff's rights against gender discrimination under the Equal Pay  
10 Act, specifically, 29 U.S.C. §206(d) have been unlawfully denied him by the actions  
11 of the Defendants.

12 31) Upon information and belief, the official personnel and payroll records of  
13 the Defendant Sate Police (kept by Defendants from view or copying by the  
14 Plaintiff) indicate that one or more female New York state troopers who were out  
15 on disability leave were paid Regulation 5.12 full salary, including health  
16 insurance premiums and benefits to which they had entitlement during that time.  
17 Said benefits were demanded in writing, by the Plaintiff to the Defendants  
18 numerous times. Those benefits were and continue to be denied to the Plaintiff at  
19 the direction of the Defendants. Whereupon said actions and inactions of the  
20 Defendants have, in fact, violated Plaintiff's rights under the provisions of the  
21 Constitution and laws of the United States as delineated in this paragraph. Title  
22 29 U.S.C. § 206(d) provides in relevant part that, "No employer having employees  
23 subject to any provisions of this section shall discriminate, within any  
24 establishment in which such employees are employed, between employees on the  
25 basis of sex by paying wages to employees in such establishment at a rate less  
26 than the rate at which he pays wages to employees of the opposite sex in such

1 establishment for equal work on jobs the performance of which requires equal  
2 skill, effort, and responsibility, and which are performed under similar working  
3 conditions...".

4 32) Under 29 C.F.R. §1620.10, as applicable to this civil action, the  
5 definition of "wages" include "fringe benefits." Under 29 C.F.R. §1620.11(a).  
6 "Fringe Benefits," in turn, is defined to include health insurance benefits,  
7 retirement benefits, accumulated leave; and other such concepts. It is alleged  
8 that these benefits, are due and owing the Plaintiff and wrongfully not paid to him  
9 on account of his gender.

10 33) Plaintiff alleges that the Defendants have engaged in such unlawfully  
11 discriminatory conduct against him in the within matter. Plaintiff further alleges  
12 specifically that the Defendants Melville and D'Amico have consistently,  
13 repeatedly and beyond their authority, intentionally, maliciously and wrongfully  
14 failed to take the necessary steps within their powers to provide the Plaintiff the  
15 equal pay mandated by 29 U.S.C. §206(d) on account of Plaintiff's gender, in  
16 violation of his rights under the provisions of the Constitution and laws of the  
17 United States as stated in this paragraph and paragraph 31, *supra*.

## 18 19 **SECOND CAUSE OF ACTION**

### 20 **DUE PROCESS OF LAW**

21  
22 34) Plaintiff repeats and realleges paragraphs 1 through 33, *supra*, as if  
23 more fully set forth herein.

24 35) Plaintiff has a constitutionally protected property interest in the  
25 monies, benefits, perks and emoluments arising from his employment, as such  
26 property rights are created by the N.Y.S. Executive Law and the rules and

1 regulations of the Defendant New York State Police. The Plaintiff may not be  
2 deprived of such protected property interests under color of law without being  
3 afforded due process of law as guaranteed by the Fifth and Fourteenth  
4 Amendments to the United States Constitution and 42 U.S.C. §1983. Said benefits  
5 were demanded in writing, by the Plaintiff to the Defendants herein at various  
6 times before and after Plaintiff was granted N.Y.S. Accidental Disability  
7 Retirement. The Defendants herein have failed to afford the Plaintiff any such  
8 due process in the adjudication of his claims and specifically the Defendants  
9 Melville and D'Amico have, acting under color of law, consistently, repeatedly and  
10 beyond their authority as, respectively, Acting Superintendent and  
11 Superintendent of the Defendant State Police, intentionally, maliciously and  
12 wrongfully failed to take the necessary steps within their powers to provide the  
13 Plaintiff any measure of due process, by summarily ignoring all his claims,  
14 implying and accusing him of criminal fraud, and continuing an unlawful and  
15 unconstitutional criminal investigation which is and was within their powers to  
16 terminate, especially after independent findings by two other state agencies  
17 affirmed the *bona fides* of Plaintiff's line of duty injury. Whereupon said actions,  
18 inactions and misconducts of the Defendants Melville and D'Amico have, in fact,  
19 violated Plaintiff's rights under the provisions of the Constitution and laws of the  
20 United States as delineated in this paragraph.

21  
22 **THIRD CAUSE OF ACTION**

23 **EQUAL PROTECTION OF THE LAWS**

24  
25 36) Plaintiff repeats and realleges paragraphs 1 through 35, *supra*, as if  
26 more fully set forth herein.

1        37) Plaintiff has been unlawfully deprived by the Defendants of his  
2 constitutional and statutory rights to be free from discrimination based upon his  
3 gender with respect to his positions as a New York state trooper and a retired  
4 trooper and the benefits to which he is entitled thereunder. The Fifth and  
5 Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983  
6 forbid the denial to Plaintiff of the equal protection of the laws based upon gender.

7        38) Upon information and belief, the official personnel and payroll records of  
8 the Defendant State Police (kept by the Defendants from view or copying by the  
9 Plaintiff) indicate that one or more female New York state troopers, including the  
10 one named aforesaid in this complaint, who were out on State Police disability  
11 leave were paid the wages and fringe benefits, including health insurance  
12 premiums, to which they had entitlement during that time. Said benefits were  
13 demanded in writing by the Plaintiff, of the Defendants, numerous times before  
14 and after his retirement on accidental disability. Those benefits were and  
15 continue to be denied to the Plaintiff at the directions of the Defendants Melville  
16 and D'Amico who have, during their respective tenures as heads of the Defendant  
17 State Police, acting under color of law, consistently, repeatedly and beyond their  
18 authority, intentionally, maliciously and wrongfully failed to take the necessary  
19 steps within their powers to provide the Plaintiff with the same compensation as it  
20 is believed they gave to one or more female New York State troopers similarly  
21 situated to the Plaintiff, by ignoring all his claims and accusing him of criminal  
22 fraud and continuing an unlawful and unconstitutional criminal investigation  
23 which is and was within their powers to terminate, especially after independent  
24 findings by two other state agencies affirmed the *bona fides* of Plaintiff's line of  
25 duty injury. Whereupon said actions and inactions of the Defendants have, in fact,  
26

1 violated Plaintiff's rights under the provisions of the Constitution and laws of the  
2 United States as delineated in this paragraph.

3  
4 **PRAYER FOR RELIEF**

5  
6 39) **WHEREFORE**, Plaintiff respectfully prays for the following relief in  
7 favor of the Plaintiff against all Defendants, from this Honorable Court:

8 a) A Declaratory Judgment that the Defendants have individually and  
9 jointly under color of law, violated the Plaintiff's federal and state constitutional  
10 rights to due process and the equal protection of the laws against gender  
11 discrimination with respect to wages and benefits as defined in the Code of  
12 Federal Regulations.

13 b) A Declaratory Judgment that the defendants have individually and  
14 jointly violated the Plaintiff's rights under § 206(d) of Title 29, United States Code,  
15 the Equal Pay Act, by engaging in gender discrimination against him with respect  
16 to wages as defined in the Code of Federal Regulations.

17 c) Injunctive relief against all Defendants requiring them to permanently  
18 terminate, and cease and desist from continuing their criminal, internal or other  
19 investigations of the Plaintiff with regard to the line of duty accident of January  
20 10, 2010, and his permanent disabilities therefrom, and to turn over to Plaintiff a  
21 complete copy of any and all documents, recordings, photographs, printed or  
22 digital, and exhibits amassed or prepared, whether written, printed, audio, visual,  
23 or in any electronic or digitized format whatsoever, and whether or not supplied to  
24 any prosecutor or judge in the State of New York, in and from these investigations  
25 or any arising out of them, and a list of the names, ranks and addresses, home and  
26

1 business, of every employee of the Defendant New York State Police, who is or was  
2 involved in these investigations.

3 d) An award of back pay, front pay and accrued benefits against the  
4 Defendant New York State Police, in favor of the Plaintiff, together with an award  
5 of compensatory damages against the Defendant New York State Police in favor  
6 of the Plaintiff, in the sum of One Million Dollars (\$1,000,000), for violation of his  
7 rights under the Equal Pay Act, aforesaid, Due Process and Equal Protection  
8 Clauses the Fifth and Fourteenth Amendments of the United States Constitution,  
9 and §1983 of Title 42, United States Code.

10 e) An award of compensatory damages of against the Defendant Melville, in  
11 favor of the Plaintiff in the sum of One Million Dollars (\$1,000,000) for violation of  
12 his rights under the Due Process and Equal Protection Clauses of the Fifth and  
13 Fourteenth Amendments to the U.S. Constitution, and the Equal Pay Act.

14 f) An award of compensatory damages of against the Defendant D'Amico, in  
15 favor of the Plaintiff in the sum of One Million Dollars (\$1,000,000) for violation of  
16 his rights under the Due Process and Equal Protection Clauses of the Fifth and  
17 Fourteenth Amendments to the U.S. Constitution, and the Equal Pay Act.

18 g) An award of punitive damages against the Defendant Melville in favor of  
19 the Plaintiff, for his intentional misconduct while acting under color of law as  
20 afore-described in this complaint, in the sum of Two Hundred and Fifty Thousand  
21 Dollars (\$250,000).

22 h) An award of punitive damages against the Defendant D'Amico in favor of  
23 the Plaintiff, for his intentional misconduct while acting under color of law as  
24 afore-described in this complaint, in the sum of Two Hundred and Fifty Thousand  
25 Dollars(\$250,000).

1 i) An award of pre-judgment and post-judgment interest as to all causes of  
2 action against all Defendants.

3 j) An award of reasonable attorney's fees, pursuant to 42 U.S.C. § 1988 and  
4 the prevailing plaintiff attorney fee statutes and provisions delineated in the  
5 Equal Pay Act in favor of the Plaintiff, against all Defendants.

6 k) An award of the costs, disbursements and expenses of this action against  
7 all Defendants.

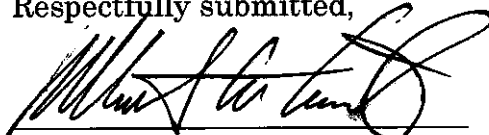
8 l) Such other and further legal and equitable relief as to this Honorable  
9 Court may seem just and proper.

10  
11 **JURY DEMAND**  
12

13 40) Plaintiff respectfully demands a trial by jury, pursuant to Rule 38 of the  
14 Federal Rules of Civil Procedure, as to all issues or questions of fact that are  
15 raised by the complaint or any subsequent pleadings, pursuant to the Constitution  
16 and laws of the United States.

17  
18 Dated: Nanuet, New York  
19 January 10, 2012

20 Respectfully submitted,

21 

22 MARTIN W. SCHWARTZ

23 Attorney for the Plaintiff

24 Bar No.: MS 9806

25 119 Rockland Center

26 Suite 134

Nanuet, NY 10954-2956

(845) 356-3644

[swohltz@optonline.net](mailto:swohltz@optonline.net)

# **COMPLAINT EXHIBIT #1**



NEW YORK STATE POLICE

MEMORANDUM

Troop      Station Headquarters

Date August 26, 2011

**To:** Ms. Victoria Santulli, Payroll Clerk V

**From:** Major Bryon D. Christman, Director of Human Resources

**Subject:** PAYROLL TRANSACTION  
\*Approved Disability Retirement - Previously "Dismissed"

**NAME:** BETLEWICZ, TIMOTHY M.      **TROOP:** T311

**TITLE:** Trooper      **SOCIAL SECURITY:** ~~XXXXXXXX~~

\*Disability Retirement

**BOB:** 05/07/10    thru      **BOB:**      **NYSTEP:**

**ADJ. EOD:**      **ADJ. PL EOD:**

**ANNUAL LEAVE PAYMENT:** \*3 days, 6 hrs - If approved for payment  
(Prev.- No Payment per Counsel's Office)

**SICK LEAVE:** \* 3 days (Prev. Nothing Reported)

**PASS DAYS:** 4/29, 5/3, 5/4, 5/7, 5/8, 5/9, 5/12 (12 hour)

## **COMPLAINT EXHIBIT #2**

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MINUTES

WORKERS' COMPENSATION BOARD

STATE OF NEW YORK

Hearing Point: Syracuse, New York

Date of Hearing: September 20, 2010

Timothy Betlewicz	Claimant
New York State Police	Discrimination Case No. 120502582

HEARING BEFORE THE WORKERS' COMPENSATION BOARD

PRESENT: Martin Donnelly-Heg, WCL JUDGE

Merrilee DeVaul

Verbatim Reporter

APPEARANCES:

Claimant present  
Kevin Bruen, attorney for the employer and carrier

WITNESS

PAGE

1 CASE DULY CALLED AT 1:24.

2 THE JUDGE: We're on the record. This is  
3 the claim of Timothy Betlewicz. The claimant is  
4 present. And Mr. Kevin Bruen is here on behalf of the  
5 employer. This is a discrimination claim which was  
6 filed pursuant to a form DC-130 alleging  
7 discrimination pursuant to Workers' Compensation Law  
8 Section 120. Mr. Betlewicz, you are not currently  
9 represented by an attorney, is that correct?

10 THE CLAIMANT: No, sir.

11 THE JUDGE: And are you requesting an  
12 adjournment in order to obtain one?

13 THE CLAIMANT: Yes.

14 MR. BRUEN: We received a letter  
15 correspondence from an attorney claiming to represent  
16 Mr. Betlewicz in all matters and directing us to have  
17 no contact with him or talk to him in any way.

18 THE JUDGE: Do you have that letter?

19 MR. BRUEN: I don't have it with me, but I  
20 could fax it to the court.

21 THE JUDGE: The file I have, and it's a  
22 paper file, we have paper files for discrimination  
23 claims, does not contain a notice of retainer with  
24 respect to discrimination, to this discrimination

1 claim.

2 MR. BRUEN: Right.

3 THE JUDGE: Mr. Betlewicz does have an  
4 attorney with respect to his workers' compensation  
5 claim, however, that pertains solely to his workers'  
6 compensation claim.

7 MR. BRUEN: Right.

8 THE JUDGE: This is an entirely separate  
9 proceeding, as you are aware.

10 MR. BRUEN: Right.

11 THE JUDGE: His attorney would have to file  
12 a separate notice of retainer.

13 MR. BRUEN: Right. I'm letting the court in  
14 on a letter we received directed to the  
15 superintendent.

16 THE JUDGE: Okay.

17 MR. BRUEN: Purporting to represent him in  
18 any and all matters relating to us.

19 THE JUDGE: Okay.

20 MR. BRUEN: Now, that was mainly directed to  
21 the fact there's an ongoing criminal investigation  
22 into Mr. Betlewicz by members of the New York State  
23 Police. It was purporting to threaten us that we  
24 shouldn't do anything of the kind or take any kind --

1           this was a letter purportedly representing everybody,  
2           and I'll send it to you if you let me have your fax.  
3           If the court doesn't think it needs it, I won't do it.

4           THE JUDGE:       If it says what you say it says,  
5           and I have no reason not to believe it, it really  
6           still wouldn't be relevant. The attorney would need  
7           to file a notice of retainer in this file in order to  
8           represent the claimant in this matter. So, that would  
9           not be sufficient.

10          MR. BRUEN:       All right.

11          THE JUDGE:       Okay. You can certainly submit  
12          it to the board for what it's worth. I'm not sure  
13          what the purpose of it would be.

14          MR. BRUEN:       If it's not going to assist in  
15          scheduling the matter, I won't do it.

16          THE JUDGE:       We're simply going to adjourn  
17          it. And once you obtain counsel, Mr. Betlewicz, have  
18          your counsel notify the board and he can request a  
19          hearing and we'll set it down for another hearing.  
20          But, at this point, I'm not going to direct any  
21          further action. I'm going to close the case pending  
22          an application to reopen on your part.

23          THE CLAIMANT:     Yes, sir.

24          THE JUDGE:       So, the burden is on you to

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reopen it.

THE CLAIMANT: Thank you.

THE JUDGE: Case is closed at this point.

Thank you.

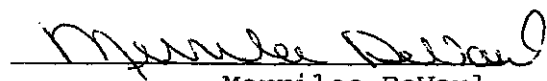
MR. BRUEN: Thanks, Judge.

WHEREUPON CASE WAS ADJOURNED AT 1:27.

C E R T I F I C A T I O N

Date: October 7, 2010

Certified to be a true and accurate transcript of the  
above proceedings.



Merrilee DeVaul  
Verbatim Reporter